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9 CHURCH OF SCIENTOLOGY INTERNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY)
13 INTERNATIONAL, a California not-)
for-profit religious corporation;)

14 Plaintiff,

15 vs.

16 GERALD ARMSTRONG; MICHAEL WALTON;)
17 THE GERALD ARMSTRONG CORPORATION,)
a California for-profit)
18 corporation; Does 1 through 100,)
inclusive,)

19 Defendants.
20

) CASE NO. BC 038955

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION FOR AN ORDER
) COMPELLING COMPLIANCE WITH
) COURT ORDER AND FOR
) SANCTIONS FROM MICHAEL AND
) SOLINA WALTON

) DATE: April 6, 1995
) TIME: 11:00 a.m.
) DEPT: Discovery Referee
) William R. Benz

) TRIAL DATE: May 18, 1995
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I. INTRODUCTION

Plaintiff, Church of Scientology International ("the Church"), seeks an order finding that defendants Michael and Solina Walton ("the Walton defendants") have refused to comply with court-ordered discovery, and compelling them to permit inspection of the real property at issue in this case at a time and date convenient to plaintiff, as well as monetary sanctions in the form of the fees and costs expended in the bringing of this motion.

II. MICHAEL AND SOLINA WALTON HAVE REFUSED TO COMPLY WITH DISCOVERY ORDERED BY JUDGE THOMAS

On November 23, 1994, plaintiff Church of Scientology International brought a motion to be permitted to complete discovery in the fraudulent conveyance portion of this action. The Walton defendants had refused to permit the Church to either depose Solina Walton, or to inspect the real property at issue in this action, arguing that the discovery cutoff had passed. When the defendants refused to meet and confer, the Church brought a motion for leave to complete discovery pursuant to Code of Civil Procedure Section 2024(e). [Ex. A to Bartilson Declaration] They specifically asked the Court for leave to depose Solina Walton, and to inspect the house located at 707 Fawn Drive.

When the Walton defendants opposed the Church's motion, they listed the issues to be decided by the Court as follows:

The issues are:

1. Should [the Church] be allowed to reopen discovery after the "30 day rule" has gone into effect?
2. Should [the Church] be allowed to take Ms. Solina Walton's deposition?

1 3. Should [the Church] be allowed to
2 inspect the residence of Solina and Michael
3 Walton?

4 4. What was the nature of the meet and
5 confer attempted by plaintiff prior to
6 bringing this motion?

7 [Ex. B to Bartilson Dec. at p. 2.] They devoted two pages of
8 their memorandum to substantive argument as to whether or not the
9 Church should be permitted to inspect the Fawn Drive Property.

10 On December 15, 1994, the Court issued a tentative ruling
11 granting the Church's motion. The Walton defendants did not
12 request oral argument and, on December 16, 1994, Church counsel
13 sent the Waltons a proposed order concerning the Church's motion.

14 [Ex. C to Bartilson Dec.] At the same time, Ms. Bartilson
15 informed the Walton defendants that she wanted to schedule Ms.
16 Walton's deposition, and the court-ordered inspection of the Fawn
17 Drive property, and proposed five possible January dates.

18 Receiving no response, on December 19, 1995, the Church re-
19 noticed the property inspection for January 24, 1995. [Ex. D to
20 Bartilson Dec.]

21 On December 20, 1995, the Waltons responded. Counsel
22 Michael Walton signed the proposed order, but refused to
23 cooperate with scheduling a date for the inspection of the
24 property, stating, "I reaffirm that absent a ruling from Mr.
25 Benz, no representative from Scientology will be permitted in our
26 home." [Ex. E to Bartilson Dec.]

27 On January 3, 1995, Ms. Bartilson responded to Walton's
28 letter, stating,

 As you are well aware, my motion to complete
 discovery by deposing Ms. Walton and inspecting the
 Fawn Drive property was granted by Judge Thomas. No
 further motion to the discovery referee is required or

1 appropriate. Kindly provide me with a date on which I
2 can send an appraiser to view the property. If you
3 decide instead to defy the Court's order, I will bring
4 an appropriate motion for sanctions.

[Ex. F to Bartilson Dec.]

5 On January 11, 1995, Walton responded by reiterating that he
6 would not permit the Church to send an appraiser to the Fawn
7 Drive property absent a ruling from the referee, and objecting to
8 the renewed inspection demand. [Ex. G to Bartilson Dec.]
9 Accordingly, the plaintiff has been unable to obtain the
10 discovery which was ordered by Judge Thomas.

11 **III. THE WALTON DEFENDANTS SHOULD BE ORDERED TO PROCEED WITH**
12 **THE INSPECTION OF THE FAWN DRIVE PROPERTY, AND**
13 **SANCTIONED**

14 C.C.P. §2031(m) provides in relevant part that, after a
15 court has issued an order compelling inspection,

16 If a party then fails to obey an order compelling
17 inspection, the court may make those orders that are
18 just, including the imposition of an issue sanction, an
19 evidence sanction, or a terminating sanction under
20 Section 2023. In lieu of or in addition to that
21 sanction, the court may impose a monetary sanction
22 under Section 2023.

23 Here, the Church brought a motion to compel inspection of
24 the property. It brought that motion to the court, rather than
25 the referee, because the Walton defendants had interposed the
26 objection that the inspection was requested after the discovery
27 cut-off. The Walton defendants objected to the Court's hearing
28 the motion, and requested that it be sent to the referee. [Ex. B
at 1.] The Court denied this request, considered the motion on
the merits, and granted it. Under these circumstances, the
Waltons have no right to insist that the referee reconsider Judge

1 Thomas's ruling, and decide whether or not plaintiff is entitled
2 to the inspection of the property.¹ The inspection has been
3 ordered. The Walton's refusal to obey the Court's order is
4 wilful, pointless, and has wasted the time of both referee and
5 counsel.

6 Without inspecting the property, the Church has no way of
7 approximating its market value, and no way of ascertaining the
8 amount of the fraudulent conveyance from Armstrong to the
9 Waltons, for which the Waltons may be held liable. Evidentiary
10 or issue sanctions are therefor difficult to approximate.

11 Accordingly, the Church requests that the referee:

12 (1) Order the Walton defendants to comply with the judge's
13 order at the Church's convenience, or face dismissal of their
14 defenses, and

15 (2) Pay to the Church sanctions, in the amount of \$ 400 for
16 fees and costs of bringing the motion, and \$ 200 in referee's
17 fees.

18 V. CONCLUSION

19 The Walton defendants have inexcusably refused to comply
20 with Judge Thomas's order compelling them to permit plaintiff to
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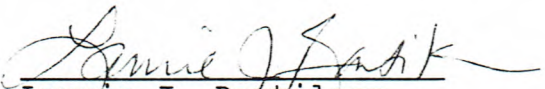
22 ¹ The reasons why the inspection is necessary and proper
23 are obvious. The gravamen of the complaint against the Waltons
24 is that Armstrong conveyed the Fawn Drive property to them,
25 without consideration, in an effort to evade the debt he intended
26 to incur by breaching the Agreement. The Church already has a
27 judgment against Armstrong for \$100,000, and the final judgment
28 after trial is likely to far exceed that amount. Since Armstrong
has insisted in deposition that he has no assets, the fraudulent
conveyance claim is very likely to be the only possible avenue
for the Church to collect on its judgment. The current market
value of the Fawn Drive property, compared to its claimed market
value at the time of the transfer, is certainly material to the
litigation.

1 inspect the property at 707 Fawn Drive, insisting that a matter
2 already decided by the court must be redecided by the referee.
3 They must be ordered to permit inspection of the property by the
4 Church's appraiser at a time and date convenient to the Church,
5 and ordered to pay the Church its costs and fees in bringing this
6 motion of \$ 600.00.

7 Dated: March 20, 1995

Respectfully submitted,

8 MOXON & BARTILSON

9
10 BY: 
11 Laurie J. Bartilson

12 Andrew H. Wilson
13 WILSON, RYAN & CAMPILONGO

14 Attorneys for PLAINTIFF
15 CHURCH OF SCIENTOLOGY
16 INTERNATIONAL

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